IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.1799 OF 2003

IN

SUIT NO.4089 OF 1993

Jagdeep J. Talekar ..Plaintiff.

V/s.

Smt. Kamlini P. Naringrekar (Since deceased) ..Defendant.

AND

Krishnath P. Naringrekar & Ors. ..Respondents.

Mr.O.A.Das for plaintiff.

Mr.B.K. Raje for respondents.

CORAM : J.P.DEVADHAR, J.

DATED : 9TH DECEMBER, 2004.

P.C. :-

1. This chamber summons is taken out by the plaintiff seeking an order that the amounts due and payable by the Life Insurance Corporation of India under Policy No.891755972 and 891755973 belonging to late Avinash P.Naringrekar be directed to be paid to the plaintiff towards the satisfaction of the decree obtained by the plaintiff.

2. In this case, the plaintiff had advanced loan to the late Avinash P. Narangrekar, for which Smt. Kamlini P.Naringrekar the defendant stood as guarantor. Since the said Avinash failed to repay the amount, the plaintiff filed Summary Suit No.4089 of 1993 against the defendant and on 30/6/1997 a decree was passed against the defendant.

3. The said decree was transferred to the Court of Civil Judge, S.D. Sindhudurg for execution. In execution of the decree, immovable property belonging to the deceased Avinash was sold for Rs.1,70,000/- and the same was adjusted towards the decretal amount. It is the case of the plaintiff that even after adjusting the said amount, the balance amount recoverable under the decree comes to Rs.93,235.15. As the deceased Avinash was entitled to receive some amount under the insurance policies taken by him, the plaintiff has taken out the present chamber summons seeking an order directing the L.I.C. to pay the said amount to the plaintiff.

4. The respondents, who are the legal heirs of the deceased defendant, oppose the chamber summons mainly on two grounds. Firstly, it is contended that

the executing Court committed an error in selling the entire immovable property even though the deceased Avinash had only 1/32th share in the said immovable property. It is submitted that in execution of the decree only such property which comes to the share of the deceased Avinash could be sold and the entire property could not be sold. It is further contended that the above error committed by the executing Court at Sindhudurg must be rectified by this Court before entertaining the present chamber summons. In this connection, the learned counsel for the respondents relied upon the Judgment of Karnataka High Court in the case of **Kariyanna v/s. Isthuri Subbaiahsetty & Ors.** reported in **A.I.R. 1981 Karnataka, 234**.

5. Secondly, the learned counsel for the respondents submitted that one Mahesh Kolsekar had filed Summary Suit No. 6453 of 1993 in the Bombay City Civil Court at Mumbai against the respondents for recovery of the amounts advanced by the said Mahesh Kolsekar to the deceased Avinash P. Nagringrekar. The counsel submitted that in the said Summary Suit, the learned Judge of the Bombay City Civil Court at Mumbai had passed an order on 21/6/2001 that the amounts due under the insurance policies of the deceased Avinash will be subjected to

the result of the said Summary Suit. Thus, according to the learned counsel for the respondents, the amounts due under the insurance policies of the deceased Avinash P. Naringrekar cannot be directed to be paid to the plaintiffs herein.

6. After hearing the counsel on both the sides, I see no merit in the contentions raised on behalf of the respondents. The first contention of the respondents that the entire immovable property could not be sold in execution of the decree because the deceased Avinash had only 1/32th share in the said immovable property is without any merit, because the said contention was in fact raised by the respondent by filing an application before the learned Civil Judge, S.D. Sindhudurg and the same was dismissed on 17/8/2000. The respondents have not challenged the the said order and the said order has become final. In any event, these arguments have no relevance in the present chamber summons where the issue is only relating to the payments due under the insurance policies of the deceased Avinash. The decision of the Karnataka High Court relied upon by the respondents have no bearing in the present case.

7. The second contention of the respondents that

in view of the proceedings pending in the Bombay City Civil Court at Mumbai initiated by Mahesh G. Kolsekar, no order be passed in the present chamber summons is also without any merit. The respondent No.1 in his affidavit in reply to the chamber summons filed on 31/1/2004 has clearly stated that he has no objection if the amounts lying to the credit of the deceased Avinash with the L.I.C. is paid to the plaintiff and Mahesh Kolsekar proportionately. It is not the case of the respondents that in the suit filed by Mahesh Kolsekar, the Court has passed any order for attachment of the amounts lying to the credit of the deceased Avinash with the L.I.C. The said suit filed by Mr.Mahesh Kolsekar is still pending in the City Civil Court at Bombay. In these circumstances, the question of proportionately paying the amounts under L.I.C. policies of the deceased Avinash does not arise at all.

8. For all the aforesaid reasons, I see no merit in the contentions raised on behalf of the respondents. Accordingly, the chamber summons is allowed in terms of prayer clause (a). However, there will be no order as to costs.

9. The respondents are directed to comply with

the formalities if any required by the L.I.C. so that the amounts due to the deceased Avinash under the aforesaid insurance policies are paid to the plaintiffs expeditiously in satisfaction of the decretal amount.

******